



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



1001 I STREET, SACRAMENTO, CALIFORNIA 95814 • P.O. BOX 2815, SACRAMENTO, CALIFORNIA 95812-2815
(916) 323-2514 • (916) 324-0908 FAX • WWW.CALEPA.CA.GOV

LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 7003 1680 0000 6167 7220

February 24, 2010

Mr. Jay Swardenski
Fire Marshal
Fremont City Fire Department
3300 Capitol Avenue, Building A
Fremont, California 94538

Dear Mr. Swardenski:

The California Environmental Protection Agency (Cal/EPA), California Emergency Management Agency, and the Department of Toxic Substances Control conducted a program evaluation of the Fremont City Fire Department Certified Unified Program Agency (CUPA) on January 12 and 13, 2010. The evaluation was comprised of an in-office program review and field oversight inspections by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Fremont City Fire Department's program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Mary Wren-Wilson every 90 days after the evaluation date; the first report is due on April 13, 2010.

Cal/EPA also noted during this evaluation that the Fremont City Fire Department has worked to bring about a number of local program innovations, including outstanding Formal Enforcement activities and a comprehensive Self-Audit process. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program website to help foster a sharing of such ideas statewide.

Mr. Jay Swardenski
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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by e-mail at jbohon@calepa.ca.gov.

Sincerely,

[Original Signed by Don Johnson]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc: Sent via e-mail:

Mr. Bruce Martin
Fire Chief
Fremont City Fire Department
3300 Capitol Avenue, Building A
Fremont, California 94538

Mr. Mark Pear
Department of Toxic Substances Control
700 Heinz Avenue, Suite 210
Berkeley, California 94710-2721

Ms. Terry Brazell
State Water Resources Control Board
P.O. Box 944212
Sacramento, California 94244-2102

Mr. Kevin Graves
State Water Resources Control Board
P.O. Box 944212
Sacramento, California 94244-2102

Ms. Asha Arora
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

Mr. Jay Swardenski
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cc: Sent via e-mail:

Mr. Charles McLaughlin
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Mr. Ben Ho
Office of the State Fire Marshal
P.O. Box 944246
Sacramento, California 94244-2460

Chief Robert Wyman
California Emergency Management Agency
3650 Schriever Avenue
Mather, California 95655

Mr. Jack Harrah
California Emergency Management Agency
3650 Schriever Avenue
Mather, California 95655-4203



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Enclosure



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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: Fremont City Fire Department

Evaluation Date: January 12 and 13, 2010

EVALUATION TEAM

Cal/EPA: Mary Wren-Wilson & Ernest Genter

Cal EMA: Jack Harrah

DTSC: Mark Pear

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Mary Wren-Wilson at (916) 323-2204.

	<u>Deficiency</u>	<u>Preliminary Corrective Action</u>
1	<p>The CUPA is not accurately reporting information requested on the Annual Single Fee and Enforcement Summary Reports 2 and 4. Examples are included below:</p> <ul style="list-style-type: none">• Annual Single Fee Summary Report 2 Fiscal Years (FY's) 2007-2009- The surcharge totals shown as remitted to state did not accurately reflect the numbers reported in the column above. This may be due to an addition error and/or transposition of numbers while entering totals onto the report.• Annual Enforcement Summary Report 4 FY's 2007-2009- The total number of informal enforcement actions reported does not accurately reflect the actual number of informal enforcement action taken by the CUPA. The number submitted greatly under-represents the CUPA's informal enforcement activity. <p>CCR, Title 27, Sections 15290 (a) [Cal/EPA]</p>	<p>Beginning January 13, 2010, the CUPA staff will review the instructions for the Annual Summary Reports. Instructions may be found on the Cal/EPA Unified Program Web site at http://www1.calepa.ca.gov/CUPA/Publications/.</p> <p>By the second progress report due July 13, 2010 the CUPA will develop and implement a process to ensure that the information required on the Annual Summary Reports are obtained and reported as accurately as possible. For any discrepancies, explanations may be noted as footnotes at the end of the report and/or summarized in the annual self-audit.</p> <p>By September 30, 2010, the CUPA will submit accurate Annual Summary Reports to Cal/EPA.</p>

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2	<p>The CUPA's dispute resolution procedure does not address the CalARP-specific elements of Title 19.</p> <p>Title 19, CCR, Chapter 4.5, Section 2780.1 [Cal EMA]</p>	<p>With the first progress report due April 13, 2010, please submit a copy of the revised dispute resolution procedure with all required elements.</p>
3	<p>The CUPA has not inspected all Tiered Permitting (TP) facilities with in its triennial inspection cycle:</p> <ul style="list-style-type: none"> • West Coast Quartz was inspected on 06/30/2004 and next on 10/30/2009, a period of five years. • In addition, Report 3 for FY 2006-2007 shows 14 of 53 TP facilities inspected; • Report 3 for FY 2007-2008 shows 14 of 42 TP facilities inspected; • Report 3 for FY 2008-2009 shows 11 of 41 TP facilities inspected. <p>In conclusion, 39 of 41 TP facilities have been inspected leaving two facilities unaccounted.</p> <p>HSC, Chapter 6.5, Section 25201.4(b)(2) [DTSC]</p>	<p>The CUPA shall ensure that all TP facilities are inspected at least triennially.</p> <p>The CUPA shall indicate if/when the goal of inspecting 33% of its Tiered Permitting facilities has been achieved in the next FY 09/10 Annual Inspection Summary Report 3, due September 30, 2010.</p>

CUPA Representative

Jay Swardenski
(Print Name)

Original Signed
(Signature)

Evaluation Team Leader

Mary Wren-Wilson
(Print Name)

Original Signed
(Signature)

Certified Unified Program Agency (CUPA)
Evaluation Summary of Findings

PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.

1. **Observation:** The CUPA follows the City of Fremont Records Management Program Policy regarding retention and destruction of documents.

Recommendation: Cal/EPA recommends the City of Fremont Records Management Program Policy be referenced, and/or a hard copy included, in the CUPA's Policy and Procedures. However, the policy is not referenced or incorporated into the CUPA's Policy and Procedures.

2. **Observation:** The CUPA is annually reviewing their Inspection and Enforcement (I&E) plan, but has stopped officially documenting this review.

Recommendation: Cal/EPA recommends the CUPA resume the practice of documenting the annual review date on the cover page of the I&E plan.

3. **Observation:** No formalized tracking system (i.e., spreadsheet) is kept for cases referred to the District Attorney. The CUPA does note the referrals on the individual facility file.

Recommendation: Cal/EPA recommends that the CUPA formalize a tracking system or procedure to track all referred cases.

4. **Observation:** The Fremont City Fire Department has regularly reported on a quarterly basis to DTSC RCRA LQG data (inspections, violations and enforcement actions).

Recommendation: No recommendation. Thank you for your assistance and cooperation in relaying this information to US EPA.

5. **Observation:** During the file review, it was noted that not all facilities with treatment units have Tiered Permitting inspection checklists completed.

Recommendation: DTSC recommends that the CUPA complete these checklists as an aid to the inspector so that no rule or regulation is overlooked and to aid in consistency of inspections.

6. **Observation:** Of the twelve files reviewed, the CUPA had either documentation or re-inspection reports for eleven of those facilities found with minor violations.

Recommendation: Good job. DTSC recommends the CUPA continue to track return to compliance for minor violations.

7. **Observation:** The CUPA has inspected all hazardous waste generators that have been identified by the CUPA:

- 1) 596 hazardous waste generators were identified in Fiscal Year 06/07 of which 317 were inspected.
- 2) 551 hazardous waste generators were identified in Fiscal Year 07/08 of which 366 were inspected.

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- 3) 503 hazardous waste generators were identified in Fiscal Year 08/09 of which 359 were inspected.

The number of hazardous waste generators identified by the CUPA is significantly less than the number listed on DTSC's Hazardous Waste Tracking System.

Recommendation: DTSC recommends that the CUPA consult DTSC's Hazardous Waste Tracking System which reflects 701 hazardous waste generators with in the City of Fremont.

8. **Observation:** The CUPA's August 2009 area plan, on page 32, has an obsolete telephone number for the State Warning Center. The 800 number shown is correct.

Recommendation: Cal EMA recommends the telephone number (916) 262-1621 be replaced with (916) 845-8911.

Certified Unified Program Agency (CUPA)
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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. **Overall CUPA and Enforcement Program:** The CUPA, with limited staff, is providing a commendable overall CUPA program and a laudable enforcement program. In addition to the normal CUPA responsibilities, the CUPA also conducts fire code permitting, inspection and enforcement. Deficiencies noted in this evaluation summary of findings were all relatively minor in relation to the overall implementation of the program.
2. **Inspection Frequency:** The CUPA has exceeded the mandated inspection frequency in most program elements. In addition, the CUPA re-inspects every business with violations for confirmation of return to compliance (RTC) and the RTC is well documented. This process sends a clear message to the regulated community that RTC activities will be confirmed and followed up on by the Fire Department.
3. **Formal Enforcement:** The Fremont City Fire Department CUPA has taken a number of formal enforcement actions that have resulted in settlements over the past three years:
 - Settled a civil case thru the DA's office against U-Haul South Bay for having violated hazardous waste labeling and pre-transportation hazardous waste requirements for \$30,000.
 - Settled a civil case thru the DA's office against Warm Springs Gas Station for various environmental violations including unlabeled hazardous waste drums, one highly corroded drum in poor condition, and the facility not having hazardous waste manifests for the past three years from the date of inspection for \$50,000.
 - In addition, another two cases have been referred to the DA for his consideration, which are enforcement confidential.
4. **Self Audit Process:** The Fremont City Fire Department CUPA has developed a comprehensive approach to its Annual Self-Audits. Each staff member within the Hazardous Materials Unit, including the Deputy Fire Marshall, completes an individual audit. These individual audits are compiled into one document. Having each staff member contribute in this way ensures that all points are covered and all perspectives are taken into consideration when preparing for the next fiscal year's program activities, including possible improvements to the existing program.